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THE STUDY OF THE NATURAL LAW.

When the multiplying complexities of civilized life require an increased complexity in the rules of law governing the relations of men with one another, the legislator or judge who fixes these rules finds that more and more of his time must be devoted to dealing with the new and artificial relations which men assume towards each other, and that less and less time need be given to considering the old, essential relations which have always existed. The essential relations of one man towards another in the community were weighed by the earliest lawgivers; in fact, almost every community owes much of its growth to the desire of preserving these relations undisturbed; of securing to the members of the community their rights to life, liberty and property. The securing of these rights having been largely accomplished in the early times, lawgivers are often engrossed with the more intricate but less important problems which arise. Thus to-day most great business enterprises are conducted by associations of men called corporations. The associates furnish different amounts of capital, and some direct the business for all. Agents are hired and money is often borrowed, and the resulting complexity of relations must be fixed by rules of law. How it shall be fixed is for the lawmaker to decide, and frequently he need consider only the economic good of the community, for these artificial relations of men seldom squarely raise an issue as to what is necessarily right or wrong, and he may arrange the new rules in any one of numerous ways quite consistently with the proper solution according to ancient rules of any moral question which may lurk in the background.

Partly as a result of this, some students of jurisprudence, who see legislators arranging and altering these artificial human relations with unquestioned authority, come gradually to believe that the older relations which are considered essential have likewise sprung up through the arbitrary exercise of authority or from general agreement as to expe-

diency, and that public opinion has been duped by custom into thinking them essential or natural to human beings united in society. Many modern theorists say that we have no rights except those given us by the political community of which we are members, and that the community may at any time withdraw its gift, if the withdrawal can be legally arranged, on considerations of political or economic expediency; hence, nobody has any natural, inherent rights. These views are stripped of their plausibility when we consider the community in its origin, for free moral agents existing outside of political communities certainly have rights; and such agents entering a political community may not, nor do they surrender to the sovereignty the right to control every action of their lives. As our Declaration of Independence proclaims, some rights are inherent and inalienable.

The false doctrine denying men all rights save those granted by the community can be traced directly to Hobbes, and its companion, the doctrine that moral right and wrong have no meaning save as referred to a supposedly shifting public opinion, was spread by the pantheistic school of Fichte, Schelling and Hegel, which Kant founded. Kant's idea that every man is a moral law for himself paved the way for Hegel's doctrine of subjectivity, the denial of all objectivity in the moral order, and the consequent belief that no such thing as natural law exists. In other words, that there is an absolute standard of right and wrong which a legislator may hold to be true for all is denied; and so we are told that the subject of moral obligation and the natural law should be excluded from the study of jurisprudence, which thus becomes a study of purely temporal public expediency as the sole determinant of what the law shall be and of purely temporal private expediency as the sole determinant of whether you or I shall keep the law or break it. The effect of the physical force with which a lawmaker may menace transgressors has in this way come to be exaggerated since Austin's time.

The radical evolutionistic notions about the birth and development of reason and of moral concepts increase the doubt as to the existence of natural law, for they undermine

belief in the definiteness of human nature itself. All these doctrines combine to make many view lawmaking and other governmental activity from a purely material standpoint of economic and political interest. These material views are forcibly exemplified in the utterances of some of our prominent men—men of thought and action, on the international questions between Great Britain and the Dutch Republic and between China and the nations which want to seize her territory, as well as on some of the questions which have perplexed our own country for several years. Although a proper study of international law peculiarly requires the consideration of what the natural law dictates, we hear even some professors of international law scouting the natural law; and, by an easy sequence, we have the moral aspect of these questions neglected. To the inquiry, "Have they a right to that land?" answer is made, "Their economic fitness is greater: the natives would never make the most of its advantages;" or "The impact of races has always gone on and always will: the weak must be replaced by the strong, for the survival of the fittest is the law of evolution; and evolution towards a higher type is the chief principle of nature."

This is to ignore the moral nature of actions performed by the representatives of big nations—a mistake which is lamentable, but which, on account of the following reasons as well as those mentioned before, is not very surprising. We sometimes read in works on corporations that the managers of a big corporation will vote that measures be taken to benefit it which they would not dream of taking to advance their own private concerns. The corporation, and, of course, the nation in a much higher degree, seems to be a thing by itself, a great engine of civilization and progress which must forge ahead, impersonal, without a body to be punished here or a soul to suffer hereafter. The tremendous interests at stake dazzle the mind; the great ends in view seem to justify the means pursued, and there is the further fact that the human agents of a big corporation or nation rarely suffer immediate punishment and often win profit and praise for wrongful actions committed in a cause wherein thousands of other people are interested, so that the temporal

retribution of moral delinquency seems to be lacking. These facts, combined with the doctrines stated above, obscure the wrongfulness of such actions, for, although the primary precepts of the law of nature are self-evident; yet, when the less evident precepts are involved in the tangled mazes of some modern human relations, they are often viewed improperly. Now associated activity with all its complications is daily increasing in importance, and we should be very careful to foster correct views of it. In the case of the old and much better understood relations of one man with another, the economic principles of expedience and the survival of the fittest will encounter more resistance, for the truth is pretty plain, but such principles are very seductive. The study of the natural law may then be important in considering the smallest private affair or the greatest international question, since it enables us to take a scientific, universal view of rights and obligations.¹

Looking at this study in another aspect, we find that it is peculiarly helpful under the new method of teaching law whereby the student is turned at once to reasoning out systematic principles of law from cases, for the student will do his task better if he knows the underlying principles of life and action on which human laws must be based. Much of his work is really philosophic, as Markby proves (*"Elements of Law,"* 4th Ed., pp. xi, xii), and he need not fear lest he build his foundations too deep. This study gives jurisprudence solidity and dignifies it by exhibiting it as a real and not as a formal science (see Holland's *"Elements of Jurisprudence,"* 8th Ed., p. 6). It introduces unity into the study of law, evincing that the primary legal principles and

¹A good example of the need of such views is found in the notion that a corporation's rights inhere in an entity created by the Legislature or otherwise, and not in the corporate associates. This notion has introduced into scores of legal decisions much confusion, which would have been avoided had the principle of the natural law that such rights can inhere only in real persons been well understood. How far these errors can be carried is seen in Holland's *"Elements of Jurisprudence,"* eighth edition, at page 85, where that gifted thinker, without piercing the superficial phenomena, speaks of the possession of rights by certain collections of property, as by the estate of a bankrupt or by an intestate's estate before administration.

the main parts into which the subject may be divided are matters of categorical exactness, and not merely convenient rules of thumb and catalogue headings.

Some account of the scientific treatment of natural law by ancient and modern writers will be found in Holland's "Elements of Jurisprudence," 8th Ed., pp. 29-36. It has been most thoroughly handled by the schoolmen, particularly St. Thomas Aquinas, and by certain of their successors. These men built up, partly from Aristotle's treatises, a co-ordinated synthesis of all laws, eternal and natural, as well as those made by special divine command or by human enactment, which will be outlined below. Their work has permeated writings on the first principles of law whose authors know them only indirectly. Among them all Suarez (1548-1617) occupies a very prominent place, and his monumental synthesis will remain as one upon which succeeding centuries have made but few improvements. Of him it is said in Halleck's "International Law" (3d Ed., Vol. I, p. 11), "Suarez was a Spanish Jesuit, and the most acute casuist² of his age. He was the first to point out, in his treatise 'De Legibus et Deo Legislatore,' the distinction between natural and consuetudinary law, and to show that international law rests not only on the principles of justice, but also on the usages of nations." (Cf. Holland's "Elements of Jurisprudence," 8th Ed., p. 346.) These were by no means the only services which he performed for jurisprudence; and since his work referred to above displays the carefulness of the conservative scholar besides the brilliancy of the original thinker, it is made the basis of the following rough sketch of the place and importance of natural law in the study of jurisprudence; and it is recommended to those who are interested in the subject.

We shall look first at the scholastic conception of the Eternal Law, whose scope embraces the whole created universe and any other universe which may have existed in the past or which may exist in the future. We shall see later that God wills to bind His creatures to certain lines of action—the natural lines of each

²A casuist is one who academically applies moral principles to supposed cases.

creature's being. This conservation of the natural order of all created things is the object of the Eternal Law. "The Eternal Law thus stated takes in manifestly a wider field than that of moral action. There is, in fact, no action of created things that is not comprehended under it. It comprises the laws of physical nature and the action of physical causes no less than the moral law and human acts. It is the one primeval law of the universe, antecedent to all actual creation, and co-eternal with God. And yet, of course, not as necessary as God: for had God not decreed from all eternity to create, neither would He have passed in His own Divine Mind this second decree, necessarily consequent as it is upon the decree of creation; namely, that every creature should act in the mode of action proper of its kind. This decree, supervening from eternity upon the creative decree, is called the Eternal Law.

"Thus the laws of physical nature in the highest generality are identified with the moral law. The one Eternal Law embraces all the laws of creation. It has a physical and a moral side: on the former, it effects; on the latter, it obliges; but on both sides it is imperative: and, though in moral matters it be temporarily defeated by sin, still the moral behest must in the end be respected as surely as the physical behest. The defeat of the law must be made good by punishment or by atonement. It is important to hold this conception of the Eternal Law as embracing physical nature along with rational agents. To confine the law, as modern writers do, to rational agents alone, is sadly to abridge the view of its binding force. The rigid application of physical laws is brought home to us daily by science and by experience: it is a point gained, to come to understand that the moral law, being ultimately one with those physical laws, is no less absolute and indefeasible, though in a different manner, than they.

"It is hard for us to conceive of laws being given to senseless things. We cannot ourselves prescribe to iron or sulphur the manner of its action. As Bacon says ('*Novum Organum*,' i, Aphorism 4): 'Man can only put natural bodies together or asunder: nature does the rest within.' That is, man cannot make the laws of nature: he can only

arrange collocations of materials so as to avail himself of those laws. But God, who makes creatures to be of certain natures, makes the law, issuing His command that every creature, rational and irrational, shall act each according to its nature." (Rickaby, "Mor. Phil.," 2d Ed., pp. 129-132.)

The existence of this law in God, of which even pagan philosophers such as Plato and Cicero had some knowledge, appears from the existence of His Eternal Providence. This Providence presupposes an external practical rule for disposing and governing created things. Moral creatures; that is, beings endowed with understanding and free will, such as men or angels, have the eternal law interpreted to them by means of subsidiary rules suitable to their nature. Human nature requires the human natural law; angelic nature, the angelic natural law. Our natural law is the sum of those rules which declare to the human intellect what is naturally right or wrong for human beings to do, and what God, therefore, having decreed the Eternal Law, approves or forbids. Thus, the natural law emanates from the Eternal Law and participates in its essence. But mankind puts the Eternal Law to use not in respect of itself but only as it is expounded and applied to human needs by our natural law, which through the medium of conscience interprets to each man how he shall comport himself in carrying out the universal order decreed by the Eternal Law. Mankind constitutes a part of all created existence, past, present and future, corresponding to the subordinate part which our natural law fulfils in relation to the Eternal Law. All the operations of the universe are directed to God's glory; and, consequently, there are some acts which the peculiar exigencies of no moral natures could make permissible; for example, blasphemy. Other acts, whose moral quality is due to the peculiarities of the human body with which the human soul is closely united, might have a different moral quality in the case of moral beings with somewhat different kinds of bodies. Thus polyandry is forbidden by the Eternal Law only inasmuch as our human conditions oppose it to our fulfilment of the object for which we are created in the way suited to us; and, therefore, in the way consonant with the eternal order. By our natural law, then, polyandry is absolutely prohibited.

"We have spoken of the law that governs the world, as that law has existed from eternity in the mind of God. We have now to consider that law as it is received in creatures, and becomes the inward determinant of their action. Action is either necessary or free. The great multitude of creatures are wholly necessary agents. Even in free agents most of what is in them and much that proceeds from them is of necessity and beyond the control of their will. Of necessary action, whether material or mental, we shall have nothing to say further. It is governed by the Eternal Law, but henceforth we have to do with that law only as it is received in free human agents as such, to be the rule of their conduct. The agents being free, the law must be received in a manner consonant with their freedom. It is proper to a free and rational being to guide itself, not to be dragged, but to go its own way, yet not arbitrarily, but according to law. The law for such a creature must be not a physical determinant of its action, but a law operating in the manner of a motive to the will, obliging and binding, yet not constraining it: a law written in the intellect after the manner of knowledge: a law within the mind and consciousness of the creature, whereby it shall measure and regulate its own behavior. This is our natural law. It is the Eternal Law in the mind of God, as made known to the rational creature, whereby to measure its own free acts.

"It is called the natural law; first, because it is found, more or less perfectly expressed, in all rational beings: now, whatever is found in all the individuals of a kind is taken to belong to the specific nature or type of that kind. Again, it is called the natural law, because it is a thing which any rational nature must necessarily compass and contain within itself in order to arrive at its own proper perfection and maturity." (Rickaby, "Mor. Phil.," 2d Ed., pp. 133, 134.)

We now ask ourselves the question, Is the natural law truly a law: are the rules of action which comprise it really imposed on us by divine precept, or do they indicate nothing but a certain force or faculty of our nature which we may term natural reason? A real law must depend on some lawgiver's will. But, it is argued, the dictates of natural

law are intrinsically necessary to man's nature, and independent even of God's will in the sense that no wish of God is needed to make murder, theft, falsehood, etc., abominable or to make certain actions estimable. We assert, however, that natural law is not only indicative of good and evil, but that it also contains a prohibition of what we should naturally avoid and a commandment of what we should naturally perform. God, who was free not to make us at all, in making us as we are and so that our natural intellect reveals certain duties to us, gave us a truly preceptive natural law, a sign manifested to everyone not impeded in the due use of reason and revealing the Divine Will in its particular desires that rational human beings shall be held to do or avoid this or that in consequence of their nature and its purpose. Whatever runs counter to right reason displeases God, and the contrary pleases Him, as must be, since His will is supremely just and cannot act save according to reason: therefore, natural reason, indicating what is in itself good or bad for mankind, shows that, according to Divine Will, one should be cultivated and the other avoided. God exercises a perfect Providence over mankind in accordance with His Divine Order. He likes what is intrinsically good and dislikes what is intrinsically bad; and in providing, therefore, that men shall do good and avoid wrong, He, as the Author and Governor of their nature, commanded these acts of commission and omission, obligating us to do or omit them. The sanction of His punishment follows disobedience.

Of course, God's right to oblige our wills goes beyond the direct precepts of the natural law, as is instanced by the precept to keep the seventh day holy. So does human authority, as, for instance, when human lawgivers proclaim that vessels on rivers shall display certain lights. In these cases, however, we are obligated to act in the manner commanded by reason of the authority of the lawgiver, who deems that if we act in a certain way it will be for the best interests of the community, and decrees accordingly. The actions in question are not in themselves matters of moral obligation, but become so when the law is made. The natural law, however, bidding us obey lawful authority, in-

directly commands or forbids whatever is commanded or forbidden by the Divine Lawgiver or by a just human lawgiver. In the case of the direct precepts of natural law, the prohibitive or commanding will of God is based on a judgment of the inherently necessary uprightness or baseness of certain acts performable by human beings. The acts forbidden are intrinsically unsuitable, and are not evil because forbidden, as Evodius says, but necessarily forbidden because evil.

As was stated before, many modern thinkers, denying that there is objective wrongfulness or rightfulness in any actions, deny the existence of natural law. They point to disagreements as to what is right and what is wrong. At these disagreements, however, we shall not wonder, when we recollect that natural law is a certain set of rules dealing with our duties; that these rules reside in the fallible human mind; and that the inclinations of the human will make us jump at pleasant conclusions in this sphere of knowledge, to a much greater degree than is the case when we are considering propositions which do not so directly affect our ease. Lawyers appreciate how true this is, for they see their most conscientious brethren stoutly maintaining the existence of this or that human law and thoroughly believing in it, which quite possibly they would be honestly ridiculing had they been retained by the other party and begun to ponder the matter with the wish of helping him.

“Besides printing, many methods are now employed to multiply copies of a document. Sometimes the document is written out with special ink on special paper: this sheet is called a stencil, and from it copies are struck off. We will suppose the stencil to be that page of the Eternal Law written in God’s mind, which regulates free human acts. The copies struck off from that stencil will be the natural law in the mind of this man and of that one. Now, as all who are familiar with copying processes know too well, it happens at times that a copy comes out very faint, and in parts not at all. These faint and partial copies represent natural law as it is imperfectly developed in the minds of many men. In this sense, and, as we may say, subjectively, natural law is mutable, very mutable, indeed, save

in the case of the primary moral judgments as to doing good, requiting kindness, etc. Still, as nobody would say that the document had been altered, because some copies of it were bad, so it is not correct to say that natural law varies with these subjective varieties. Appeal would be made to a full and perfectly printed impression of the document, one rendering the stencil exactly. Natural law must be viewed in like manner, as it would exist in a mind perfectly enlightened concerning the whole duty of man, and exactly reproducing in itself that portion of the Eternal Law which ordains such duty. Were such a mind to discern a natural obligation to lie differently at two different times, all the relevant circumstances being alike in both cases, and the moral solution different, then only could the natural law be held to have changed." (Rickaby, "Mor. Phil.," pp. 147, 148.)

Aristotle asserts that some actions are necessarily evil; as, malevolence and envy, and likewise some external actions; as, theft. These, he says, are of their nature universally heinous. Although what is naturally good for us to do, but not morally necessary, may for special cause be forbidden, and be, therefore, bad for us to do, yet the state of its being bad is not natural to it, and on the removal of the prohibition it becomes good once more. If to hate God, for instance, had not some reason of intrinsic wickedness antecedent to any positive prohibition, it could be that it might not be forbidden. Why should that not be possible if the wrong were not wrong naturally and of itself? In the same way, lying is essentially wrong, and "we are enabled to answer Milton's question: 'If all killing be not murder, nor all taking away from another, stealing, why must all untruths be lies?' Because, we say, killing and taking away of goods deal with rights which are not absolute and unlimited, but become in certain situations void; while an untruth turns, not on another's right, but on the exigency of the speaker's own rational nature calling for the concord of the word signifying with the thought signified, and this exigency never varies." (Rickaby, "Mor. Phil.," 2d Ed., p. 231.) So, with envy, blasphemy, idolatry. So, the killing of an innocent man directly willed and brought about

as a good in itself can never be right. The economic theory of law would sometimes justify killing the plague-stricken as a sanitary precaution. It might even in a famine justify Dean Swift's proposal to eat babies. Our law is based on higher principles, however; and in a famous English case it was decided that where shipwrecked sailors in a starving condition draw lots to decide who shall die in order that the rest may have food, it is a crime to kill him to whom the lot falls even though he is resigned to such a death. So, with duelling as defined to be, a meeting of two parties by private agreement to fight with weapons in themselves deadly. So, with suicide and other wrongful acts. These are some of the more evident precepts. Others are less readily recognized, and require more careful study to be grasped in their complete binding force; for instance, that which condemns such practices as "squeezing" innocent "shorts" after "cornering a market." Many of them are invaluable in the solution of practical questions, particularly those questions which have to do with the various extensions of governmental activity and supervision which tend, however remotely, towards socialism. Nowadays, when the Henry George economic sect is urging communism of land, when the industrial arbitration sect would have a strike by laborers made a crime and when the anti-trust sect wants confiscation of capital; when hanging criminals or even whipping them and all vivisection of animals by medical professors are said to be unalterably opposed to natural justice by people who have influence with legislatures, it is important to take a sensible view of society's rights as against you and me, and of our property rights and our other rights in society,—like the view, for example, which our judges are taking in setting aside dozens of misconceived anti-trust statutes; and it is very important for law-schools to aid in the scientific study of such matters.

Thus natural law embraces all the principles which have a necessary connection with moral rectitude and it proclaims the opposite of sheer wickedness or moral insubordination. As in other spheres of truth, so in morals, some principles are less evident than others, but we are endowed with reason, and ought not to expect the knowledge of all our nat-

ural duties to "come natural" in the sense that we should never need to consider them carefully. The natural law extends to all conclusions which are based on a consideration of the primary principles of doing good and shunning evil and which are thence deduced by our natural reason. The truth of these deduced principles is bound up with that of the primary ones, and He who framed the latter necessarily commanded whatever is consonant with and prohibited whatever is repugnant to the former. The commission of an act in ignorance of the full force of some of these principles, however, which would not have been committed had its author known better is often excusable, for although the action is wrongful in itself, yet he may be innocent in view of his state of knowledge and his use of judgment.

We now turn to a subject peculiarly depending on natural law, that, namely, of international law. There is no earthly government over nations to administer justice in case of disputes. There is neither a recognized court to decide such questions nor any power which could be relied on to enforce a court's decisions. Under these circumstances natural law is the only law that can be said to operate. It informs contending nations of such things as are either necessarily wrong or necessarily right for nations so situated to do, just as it would show two strangers meeting on an unclaimed island that their common human nature establishes certain rights and obligations which both must respect, and these constitute their natural relations towards each other.

Of course, if the two nations or the two men enter into various agreements or if certain customs have marked their intercourse, these agreements or customs become more minute regulators of their actions toward each other than the natural law by itself, but again the binding force of these agreements or customs arises from a principle in the natural law ordaining that we shall live up to our just engagements, so that economic interpreters of international law cannot get rid of the element of moral obligation by explaining the mutual fulfilment of obligations by nations on the sole ground of express agreement, custom growing into tacit agreement or public opinion. Since if the net result

of abiding by an agreement will be disagreeable to any nation, those who are at the head of it will disregard the agreement unless they feel a moral obligation not to do so. For the materialists, thereupon, to invoke public opinion of the desirability of abiding by agreements as a mere force making people keep faith with one another, is for them to invoke the star witness against their materialism, since public opinion at once points to that on which it is founded, namely, the common knowledge shared in by all nations at all times, that there exists a moral law of right and wrong above the consideration of earthly gain or loss, and that this law exerts a higher obligation and has a higher sanction. In the introduction of Vattel's "Law of Nations" one may read much that is interesting concerning the part natural law plays in international law.

In viewing these matters of international law the student of jurisprudence should inquire as to what are the natural relations of nations, and whether or not nations properly observe them and the agreements and customs which supplement them. In looking at the domestic laws of a nation or nations he may profitably ascertain (1), what the objective natural law is, as properly understood and as it should sway all; (2), with what force and in what different ways does it, as at present apprehended, affect (*a*) human lawgivers in the making of their laws and (*b*) the people in obeying them. Thus natural law is to be considered objectively as revealing natural suitability and unsuitability or moral right and wrong, and subjectively as moving the lawmaker and the people rationally or morally, or in both of these ways together, in accordance with their more or less firm apprehension of its precepts and adherence to them. We have taken a brief glance at its objective existence; we shall indicate below something of its subjective bearings and their importance. The study of its objective reality is the more valuable, especially for the ordinary law-student, since it reveals the essential determinants of what our rational, social human nature demands, and therefore the essential determinants of the subjective public opinion on these questions in so far as it conforms to objective truth. Thus it corrects the imperfections of public opinion, which studied by itself

shows a lack of unanimity on many questions and a general ignorance of the precise bounds of many principles which leads to error in complicated situations. Those who deny the existence of natural law sometimes declare that in dealing with these matters the lawmaker simply follows public opinion, and thus they seem to make him in this most important affair, what they would not make him in any other, a follower of opinions, not a guide who probes into the reasons of them. If there exists, however, as we believe, a necessary intrinsic suitability or unsuitability in many actions, it is worth the legislator's while to learn about it thoroughly. Entirely apart from the eternal sanction of the natural law, we know that it has a temporal sanction; that not to live as becomes our nature is to live irrationally and foolishly; and that nations as well as men pay the penalty of folly. We have spoken above of the moral order, but note that when, for instance, we designated certain actions as immoral, it has often been only inasmuch as immorality was necessarily bound up with a violation of the natural order, with which latter order we are more closely concerned. Thus wise legislators try to abate divorce evils and similar wrongs, not so much as being things immoral in the sense of being displeasing to God, but because the reason of their being immoral, their discordance with natural fitness should make them displeasing to anyone who considers human rules of action, although he were merely a rationalist. This constitutes a strong argument for the study of natural law in law-schools. The lawyer should be a practical sociologist; if he learns the fundamental principles of human society, observation and common sense will do the rest.

Looking now at positive law, we see that it is divided into divine and human positive law. We shall pass by the divine positive law, only recalling the instance of it before mentioned in the commandment to keep the seventh day holy. We instanced before, also, the human positive law that river vessels should display certain lights. We know that human legislators often re-ordain portions of the natural law, sanctioning their own commands with their own punishments. Thus murder, arson and theft are punished by hanging and imprisonment, and slander by making the

guilty person pay damages to the person slandered. The human lawgiver very frequently also commands or forbids the commission of acts which were before in themselves indifferent, as in the instance just given regarding river vessels or in the instance of a prohibition of the sale of intoxicants on election days. It is well known that even in the case of laws regarding these acts which are in themselves indifferent the moral wrongfulness of disobedience to lawful authority is an important element in securing obedience to the laws, and, in a higher degree, perhaps, the moral wrongfulness of committing any acts directly forbidden by natural law deters many from violating such human laws as forbid us to commit certain acts already forbidden by the natural law. The moral obligation with its eternal sanction is really necessary to the convenient government of states. The wisdom of studying and cultivating these fixed precepts of the natural law is, therefore, apparent, if only inasmuch as they manifest the necessity of the functions of the state and uphold its established authority. They are not friends of the state who would induce us to believe that there exists no such thing as a moral obligation to obey laws, and yet such a belief is the logical upshot of most materialistic doctrines. In the case of the precept of natural law enjoining submission to the state, as in the case of most others, the people have a firm but unscientific apprehension of the truth. The false doctrines should, nevertheless, be disproved scientifically and shown to be unnatural and immoral before they can be spread abroad.

Let us see more closely how natural law supports human positive laws. Human society is the natural outcome of human needs and desires, and progress in knowledge, which is natural to humanity, makes for closer social union. Since the interests of individuals are often opposed to those of the community as a whole; and since other communities also may have conflicting interests, a political head, whose function is to discover and obtain what is for the common good, is the natural result. The political head, the government, or a special department of it, is charged with the task of legislating. Many moral wrongs if allowed to

go unpunished by the state would at least endanger its existence, and the early lawmakers are usually much occupied with determining what part of the natural law should be enforced by human enactments and penalties, and thus is constituted most of what is called criminal law. But state legislation must in the nature of things go beyond natural law, which leaves undetermined thousands of matters which it is important to settle in order that conflicts may not arise. It is often indifferent how they are settled, but necessary to settle them in some way or other. Thus, if an article under sale perishes before delivery the loss falls, apart from contracts to the contrary, upon whichever of the two parties is the owner at the time. So far nature rules. But who is the owner at any given time, and at what stage of the transaction does dominion pass? That is settled by the law of the land, which is often modeled on the custom of such dealings. (Paley, "Mor. Phil.," Bk. 3, Cap. 7; Rickaby, "Mor. Phil.," 2d Ed., p. 359.)

A developing civilization requires more and more to be kept in order by a vast body of positive law. Without positive laws a multitude of property rights would be unprotected and even undetermined. The state by what is called its criminal law protects property against the open aggression of robbers; but, in order to secure to all the fruits of their labor, it must go further and define numerous open questions between possessors as to manner of acquirement and conditions of tenure, and between other contracting parties. Since then human laws are necessitated by the natural development of society, they are sanctioned by the natural law, and, therefore, by the Eternal Law and by God. They are not merely the exactions of those possessing physical might, and they must bind the conscience. Government without the power to coerce is helpless and the just coercion of rational beings presupposes the moral guilt of disobedience. If a law addressed to us is categorically imperative there remains, then, no doubt about its obligating us in conscience. If it seems the intention of the legislator not to bind us absolutely to perform the act required, and we do not in fact perform it, we are bound to perform the alternative; that is, to pay the penalty. For otherwise

the legislator would not have the right to inflict the penalty.

Moral obligation, then, is the direct and necessary effect of every true law. This conclusion may seem open to doubt in a case—the case, for example, of many corporation laws, where the law appears only to confer privileges, and does not in set terms prohibit or command anything. But let us recollect that right is correlative with obligation or, as the maxim runs, “One man’s obligations begin where another’s rights end.” So, in the case of laws dishabilitating certain persons from making legal contracts or providing that certain kinds of agreements shall be unenforceable, let us observe that these laws have regard to the enforcement of certain claims of parties litigant which the legislator directs shall be granted or refused, and in this manner he lays an obligation on the judiciary, who are bound within certain limits to give effect to legislative will. For instance, no obligation was imposed by the Statute of Frauds upon parties entering into contracts to comply with certain formalities, and frequently honest men waive objections which they might raise by reason of that law. The Statute of Frauds was a rule of action prescribed to judges, and the obligation thus imposed is by no means to be overlooked when one studies scientifically how laws bring about the results intended by the lawmakers.

When we prove in this way that every human law exerts a moral obligation on those who are called upon to observe it, we exhibit jurisprudence as something more than a general commentary on rules upheld by sovereign force. (Holland’s “Elements of Jurisprudence,” 8th Ed., pp. 25, 26.) For we show how its every precept relates back, as the divine positive law relates back, to the natural law and thence back to the Eternal Law. The bare outlines of this admirable system reveal at a glance the co-ordination and interdependence of laws as they are commanded by the Divine Lawgiver and by human lawgivers, and the sanction which parts of the natural law indirectly receive from temporal rulers as well as that which human laws receive from the Eternal Ruler.

But this does more than properly arrange and systematize the various kinds of law. It does more for the study of hu-

man law than suggest broad principles for dividing classes of questions and for studying and handling those which newly arise. It reveals as a constant and vital element the moral quality of certain actions which modern writers are prone to slight. Holland, for example, in his "Elements of Jurisprudence" (8th Ed., p. 26), announces that he will pass by, as foreign to his subject, the head of Ethics, "which has to do with the conformity of will to a rule," and confine himself to considering "the conformity of acts to a rule." He disregards the natural law, also. But the student of jurisprudence should not treat as foreign to his subject the rights and obligations natural to man as a rational and a social being which make it intrinsically suitable that human rules of law be arranged in this way or in that, and the knowledge of which is of vast weight with the lawmaker when the law is made, and with the people for whom it is made. When we remember that acts done in obedience to human laws depend on human will it is not going too far below the surface to consider in its outlines a constant and extremely important element in determining the act through the will. Taking an incomplete, unphilosophic view of the subject and mistaking it for a complete philosophic view leads to the error of explaining phenomena which the disregarded element largely influences, as being entirely due to other causes. John Stuart Mill correctly states that what secures obedience to many important laws is public opinion, the state often being unable to follow up its laws with force; and we know on what public opinion is founded. From the bringing of people into this world to their departure for the next world, the influence of the natural law is always to be felt, and it helps the human law at all points, especially where the latter is weak. This is notably true in the case of suicide—that bane of society against which human lawgivers bring their power to bear only preventively and therefore often ineffectively. In point of the physical force back of them all that they can forbid, as being all that they can sanction with punishment, is an unsuccessful attempt to commit suicide, for the one who succeeds in his frightful purpose is forever beyond their jurisdiction.

But the influence of the natural law on the people in pro-

curing submission to human enactments is not all. There is also its great influence with those who make human enactments, the lawgivers in helping them to discern and obliging them to provide what is good for the people. No form of government will work well unless the people are disposed to submit to law and their representatives or their monarch disposed to govern them well.

Human society is a plexus of relations, and each man is a unit whose properly enlightened mind and well-disposed will should bring about such a self-ordering towards other men as will make him a harmonious unit. Some men called lawmakers help arrange this plexus, and devise among other things punishments of various sorts; that is, disagreeable consequences which will follow upon the unit's refusal in important matters to harmonize himself with others. Natural law, we have seen, shows us the first principles of this harmony, and exerts a great influence in disposing legislators to add to it as far as they can and in disposing the people to observe it. Mutually fulfilled obligations are essential to it, but note that the sanction of the human lawgiver, the disagreeable consequences of disobedience which he devises, do not follow as a matter of physical necessity upon any unit's disobedience. It is all a matter of the relations of men, of free moral agents, towards each other, and the most that directly happens to enforce the lawmaker's will is that other units are obligated to visit the offender with the disagreeable consequences. If they do not so visit him, may it not be that the lawmaker has so arranged it that disagreeable consequences will fall upon them for their disregard of obligation? No, at the most simply that other units are obligated to visit these offenders with disagreeable consequences—and so, go back as far as we will, we shall find that no physical force is raised up at the lawmaker's behest, and that in the last analysis, no matter how cunningly he may devise it, by setting off one functionary or unit against another, yet the plexus is held together in many places only by some unit's belief in right and wrong, by his knowledge of the natural law and his abiding by it.

Thus our judiciary, on whom rests the interpretation of our laws, need usually little fear temporal coercion or pun-

ishment if they disregard the obligation imposed on them by the legislative will, and render the decision prompted by their private economy. The fact of the immense influence with most men of their understanding that something is naturally suitable and right or unsuitable and wrong, which fact makes the clear, scientific demonstration of such matters through the study of the natural law so potent and effective, is seen in the struggles which the judiciary, whose members as a rule have been much more enlightened and true to conviction than men generally, have waged against the tyranny formerly of monarchs and latterly of various sorts of socialists, who have grasped at other people's property through unjust income tax, corporation tax, anti-trust and other so-called laws. But judges have found ways to uphold the principles of natural justice, formerly by invoking those principles directly under the doctrines of *epiikia*, *æquitas*, equity, etc., and chiefly, when the need arises under our system of government by applying the principles of the Federal or State constitution, which are often very properly interpreted and even extended to prevent the sanctioning of injustice and inequality under a government in whose first principles it was sought to confirm the just and equitable principles of the natural law. And we know that our laws are safe in the hands of our judges, for, although they are often free to settle momentous questions one way or another at their pleasure, and although they often might at such times enrich themselves at the expense of doing injustice, they have, nevertheless, been well content to heed the obligations of their moral nature and to take counsel of the precepts of the natural law, in order that our legal system may be amplified and expanded in harmony with those precepts to suit the growing requirements of society. Such men toil patiently all their years to adorn and to build grander and yet grander the Temple of Justice, whose architecture is, as we have seen, like that of some old European cathedrals, strangely composite, but which fills us the more with awe from that very fact, suggesting as it does the common needs and aspirations of alien races and ages, and the co-operation of men from generation to generation in the work of the Most High.

John J. Sullivan.